

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.2222/Mds/2015

निर्धारण वर्ष /Assessment year : 2006-2007

The Deputy Commissioner of Income Tax,
Company Circle 5(3),
Chennai 600 034.

Vs. M/s. Rajkumar Impex Pvt. Ltd
Old No.93, New No.119,
4th floor, Abhiramapuram,
Chennai 600 018.

(अपीलार्थी/Appellant)

[PAN AAACR 3577J]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Duraipandian, IRS, JCIT.
: Ms. Hemalatha K. ACA

सुनवाई की तारीख/Date of Hearing

: 19-01-2016

घोषणा की तारीख /Date of Pronouncement

: 05-02-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order of the Commissioner of Income-tax (Appeals)-3, Chennai in ITA No. 18/2008-09/A-3, dt 01.09.2015 for the assessment year 2006-2007

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The only substantive ground raised by the Revenue is that the Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to exclude the loss of ₹1,36,88,806/- arising from Trading activity from profits of eligible business for calculating relief u/s.80IA of the Act and also loss arising from high sea sales of raw cashew nuts which is an activity other than an activity of Industrial Undertaking.

3. The Brief facts of the case is that the assessee is in the business of processing raw cashes nuts and international exports filed return of income for the assessment year 2006-07 on 13.11.2006 declaring a total income of ₹6,31,99,764/-. As per scrutiny norms the case was selected and notices u/s.143(2) and 142(1) of the Act was issued. In response to the notices, the Id. Authorised Representative appeared on various dates and produced details. On perusal of computation of income the assessee has claimed ₹1,66,13,518/- as deduction u/s.80IA of the Act on eligible profit of ₹5,48,54,425/- and profit also included miscellaneous income of ₹4,96,53,528/- comprising of DEPB of ₹1,37,62,620/-, VKUY ₹2,09,11,824/- and also

other incomes. On perusal of the schedule A of profit and loss account, the assessee also included local sales of empty gunny bags of ₹46,08,290/- all these aggregating to ₹5,46,94,034/-. As per Assessing Officer all these items have to be excluded from the profit and loss account for calculation of deduction u/s. Sec80IA and on the same parameters Assessing Officer excluded the income and recomputed eligible profits at ₹1,60,391/- and also further observed that if the purchase and sale of cashew kernels made directly without undergoing through manufacturing process there will not be any profit and made a disallowance of claim u/s.80IB of ₹1,66,13,518/- and assessed total income at ₹2,68,65,150/-. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of the assessee filed written submissions on the disallowance made by the Assessing Officer. The Commissioner of Income Tax (Appeals) on the observations of the Assessing Officer and also relying on the submissions of the assessee on first ground, which the assessee has not pressed and was dismissed. In respect of non consideration of loss from trading activity which is subject matter of

dispute, the Id. Authorised Representative submitted that the process of extracting cashew kernels from Raw Cashew Nuts involves different processes to meet American standards. But due to non compliance of international standards they were sold to third parties at high seas at a loss of ₹1,24,29,031/-. The assessee while considering the financial statements has considered both the profits from the eligible business u/s.80IA and loss from trading activity and arrived at net profit of ₹5,48,54,425/-. The Assessing Officer while disallowing the claim observed that the loss do not have nexus to the eligible business and not to be deducted. The Id. Commissioner of Income Tax (Appeals) is of the opinion that income from activities other than industrial undertaking such as trading ought to be excluded while computing the eligible deduction and directed the Assessing Officer to compute eligible deduction after excluding loss from trading activity as in the earlier years and allowed the appeal on this ground. Aggrieved by the order of the Commissioner of Income Tax (Appeals) on this specific grounds, the Revenue has filed an appeal before the Tribunal.

5. The Id. Departmental Representative reiterated his submissions that the Commissioner of Income Tax (Appeals) has passed an order contra to the law and facts and erred in directing the

Assessing Officer to exclude loss of ₹1,36,88,806/- from trading activity from profits of eligible business for the purpose of calculating relief u/s.80IB of the Act. Further, he reiterated that the trading activity on high sea sales is an activity other than activity of Industrial undertaking and any loss shall not be set off and relied on lower authorities order and prayed for setting aside the order of the Commissioner of Income Tax (Appeals).

6. Contra, the Id. Authorised Representative of the assessee reiterated his submissions made before the Assessing Officer and also written submissions filed before the Commissioner of Income Tax (Appeals) on the ground in dispute and substantiated his arguments and relied on order of Id. Commissioner of Income Tax (Appeals) who has rightly considered that loss to be excluded for the purpose of calculating profit of eligible business and also relied on judicial decisions supporting his arguments and relied on earlier year assessment orders.

7. We heard the rival submissions of both the parties and perused the material on record and also judicial decisions cited. The Id. Departmental Representative relied on the findings of the Assessing Officer were the basic issue being the loss due to trading activity

should not be excluded from the profit eligible under Sec.80IA but on the ground of disallowance the Revenue accepted the assessee contention in earlier assessment years. On the other hand, the Id. Authorised Representative drew our attention to the order of the earlier assessment year 2004-05 where computation u/s.80IA of the Act was calculated after excluding income attributing to non manufacturing activities from income from DEPB sales & profit on trading of raw cashew nuts. The Revenue has accepted the contentions in earlier year which has become final. The Id. Authorised Representative drew our attention to the provisions of the Act where computation of eligible profits u/Sec. 80IA are determined and relied on the findings of decision of High Court of Punjab and Haryana in the case of *Liberty Shoes Ltd vs. CIT (2007) 158 Taxman 340*, where the lordship has held at para 8 as under:-

‘Accordingly, we are of the view that the assessee will not be entitled to deduction u/s. 80IA of the Act in respect of profit derived from business of trading of products of other concerns as the same cannot be held to be profits and gains derived from industrial undertaking’.

Considering the facts and findings of the judicial decision, we are not inclined to interfere with order of the Commissioner of Income Tax (Appeals) on this ground and upheld the same and dismiss the grounds

of Revenue.

8. In the result, the appeal of the Department in ITA No.2222/Mds/2015 is dismissed.

Order pronounced on Friday, the 5th day of February, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 05.02.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |